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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re R.R., a Person Coming
Under the Juvenile Court Law.

B301853

(Los Angeles County
Super. Ct.
No. 19CCJP05655A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ALISHA M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Rashida A. Adams, Judge. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for
Defendant and Appellant Alisha M.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, Navid Nakhjavani, Principal Deputy
County Counsel, for Plaintiff and Respondent.

On October 28, 2019 the juvenile court sustained a petition under Welfare and Institutions Code section 300, subdivision (j),¹ alleging Alisha M.'s extended history of substance abuse, which led to her two older children being declared dependents of the juvenile court and termination of her parental rights as to them, rendered her unable to provide regular care for her infant son R.R. and created a detrimental home environment that placed the child at risk of serious physical harm. The court declared R.R. a dependent of the juvenile court and placed him at home with his parents, Alisha and Ralph R. (Father), under the supervision of the Los Angeles County Department of Children and Family Services (Department). On appeal Alisha contends the court's jurisdiction finding and disposition order are not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Dependency Petition

Nine-month-old R.R. came to the attention of the Department in late August 2019 when he was admitted to the hospital after falling from a bed to a hardwood floor while in the care of Alisha and Father and fracturing his right femur. In a dependency petition filed on R.R.'s behalf on August 30, 2019, the Department alleged pursuant to section 300, subdivisions (b) and (j), that Alisha, whose criminal background included a conviction for possession of a controlled substance, had a history of substance abuse, including methamphetamine and alcohol, which rendered her unable to provide regular care for R.R., who was of such a young age as to require constant care and supervision, and that R.R.'s older siblings, Bella S. and

¹ Statutory references are to this code.

Angolina B., were dependents of the juvenile court, receiving permanent placement services due to Alisha's substance abuse. The Department further alleged pursuant to section 300, subdivision (b), that Father,² whose criminal history included convictions for possession of a controlled substance, had a history of substance abuse, including methamphetamine and marijuana, which rendered him unable to provide regular care of R.R. Finally, the Department alleged, also pursuant to section 300, subdivision (b), that Alisha and Father medically neglected R.R. by failing immediately to obtain emergency medical treatment after his fall.

2. *The Jurisdiction and Disposition Hearings*

a. *The exhibits*

According to the Department's reports, Alisha took R.R. to the emergency room on August 24, 2019. She and Father were disassembling R.R.'s crib the previous day and "weren't paying attention" when R.R. fell from a three-foot-high bed and struck part of the crib before hitting the floor. Alisha believed the fall "didn't seem that bad" because R.R. only cried briefly. It was not until the following day that she noticed he only moved his left leg and his right leg was swollen and becoming hard. The social worker at the children's hospital where R.R. was later transported reported his injury was consistent with Alisha's statement.

Interviewed on August 24, 2019, Alisha told the Department's social worker she was currently residing at Prototypes Sober Living Home, under the Recovery Bridge Housing program, as required by a court order. She graduated

² Father was not the father of Bella or Angolina.

from living in an inpatient facility in January 2019; progressed to sober living on February 28, 2019 but expected to move in with Father on August 26, 2019; and was currently also enrolled in an outpatient program from which she would soon be graduating. Although Alisha was employed part-time at a fast-food restaurant and primarily cared for R.R., Father, who was unemployed, also helped care for the child. In addition, R.R. attended daycare.

Alisha denied she currently used drugs or alcohol and stated she had not used methamphetamine and alcohol for the previous 18 months. She explained she was currently on probation in two counties and subjected to random drug tests multiple times per month through probation, her outpatient program and her sober living facility. Although she knew Father, with whom she had a good relationship for four years, used to smoke marijuana, she denied he used any other drugs or engaged in any current drug use.

Father told the social worker he had been in a relationship with Alisha since 2013 or 2014. Denying current drug or alcohol use, Father said for the previous 15 months he had not used marijuana and crystal methamphetamine; however, in the past he used marijuana every other day and snorted crystal methamphetamine on the weekends. He stated he had been arrested and convicted on charges of receiving stolen property, identity theft and drug possession, all in 2017, and denied being currently on probation or parole. He believed substance abuse meetings were a waste of his time and he had a right to decline drug treatment because he was not on drugs.

In a subsequent interview on October 11, 2019 Alicia told the social worker she was not defined by her past mistakes and

had “grown a lot and continued to grow and learn.” Father similarly stated his past was “just that, my past” and expressed his commitment to R.R.

The social worker expressed concern regarding Alisha’s and Father’s substance abuse history and extensive criminal history involving drugs. Alisha had drug-related charges on at least seven different occasions; and Father had well over a dozen drug-related charges spanning more than a decade commencing in 2006, with the most recent (for possession of a controlled substance and unlawful paraphernalia) on November 20, 2018. Both Alisha and Father had been arrested on May 24, 2016 for possession or purchase for sale of a controlled substance. The social worker stated Father had not been forthcoming about his criminal history, as he had reported only his 2017 convictions and failed to disclose all his other arrests and convictions. She also stated, although Alisha denied knowing Father used any drugs other than marijuana, Alisha had reported being in a relationship with Father for four years and should have known he had a substance abuse issue with crystal methamphetamine. She expressed concern Alisha, who had been court-ordered to live in a sober living home where Alisha had been residing for the previous six months, was moving into a regular apartment on August 26, 2019 with Father: Alisha would no longer have the same level of supervision and would no longer be drug tested as frequently. She was further concerned that Alisha had previously had her parental rights terminated as to her two older children due to her unresolved substance abuse issues.³

³ Bella and Angolina were declared dependent children of the juvenile court and removed from Alisha’s custody after the court found both children were at substantial risk of serious physical

b. *Alisha's testimony*

Alisha testified she had completed the Flossie Lewis program, an inpatient drug treatment program, on January 6, 2019. From there she went to the Prototypes outpatient facility and moved into Recovery Bridge Housing. Alisha expected to graduate from the Prototypes outpatient program on November 8, 2019 and then progress to its aftercare program, which would require her to attend four group meetings a month rather than four a week. She was required to submit to drug testing once a month while attending Prototypes. She was also on felony probation; the conditions of her probation required not only that she continue to attend the Prototypes aftercare program but also that she submit to drug testing once a month.

On cross-examination Alisha testified she had been sober for at least a year and a half. She also testified she had no concerns about Father's substance use or abuse. When asked by the court whether, to Alisha's knowledge, Father ever used any illicit drugs, she responded, "I mean, weed. I'm not sure about meth."

harm because of Alisha's history of substance abuse and current use of illicit drugs. At a 24-month review hearing (§ 366.25) the court found Alisha's progress in dealing with her substance abuse issues had been minimal and return of the children to her custody would create a substantial risk of detriment to the children and terminated reunification services. The court subsequently found the children suitable for adoption and terminated the parental rights of Alisha and the children's fathers. We affirmed that order in a nonpublished opinion on September 16, 2019. (*In re Bella S.* (Sept. 16, 2019, B294735, B296364).)

c. Counsel arguments and the court's ruling

Following the close of evidence, the Department argued, despite Alisha's active pursuit of sobriety through treatment, Alisha had a very long history of substance abuse. Alisha, now 25 years old, reported using methamphetamine and marijuana since the age of 16. Although Alisha insisted she had been clean for the past year and a half, the Department continued, that was not a lengthy period of sobriety in relation to her nearly 10-year substance abuse history, a history that had prevented Alisha from reuniting with her other children. Moreover, R.R., less than a year old, was a very young child who required the constant care and supervision only a sober parent could provide.

Alisha's counsel requested the juvenile court dismiss all counts directed to her, emphasizing Alisha had completed all programs and there was no indication Alisha was currently using drugs or that she had done so for a significant period.

In addition, Alisha's counsel argued, even if the juvenile court dismissed the petition, Alisha continued to be on felony probation for at least the following year. The terms of Alisha's probation required her to submit to monthly random drug testing and to continue in her rehabilitation program, which separately involved additional drug testing and outpatient services, thereby ensuring R.R.'s safety.

At the conclusion of counsel's arguments, the court sustained the petition as to section 300, subdivision (j). The court explained the evidence established Alisha's lengthy and significant substance abuse history. Even though the Department had not proved any use of illicit substances during the most recent treatment period, the court found Alisha's last relapse was relatively recent in the context of that significant

history. Although Alisha’s current participation in programs was commendable, the court determined jurisdiction was nevertheless appropriate over R.R., a child “of extremely tender years,” as a result of Alisha’s history of drug use, participation in drug treatment programs and relapse. The court also pointed out Alisha’s significant substance abuse history had impaired her ability to care for R.R.’s siblings and eventually resulted in their receiving permanent placement services. Moreover, the court was troubled by Alisha’s testimony expressing equivocation about her awareness of Father’s methamphetamine use. It did not find credible Alisha lacked knowledge of Father’s use of substances beyond marijuana. The court dismissed all three of the counts alleged under section 300, subdivision (b).

Moving directly from the jurisdiction hearing to disposition, the court declared R.R. a dependent of the juvenile court. However, it found there were services available to protect R.R. without removal from parental custody and ordered the child released to the parents’ home under the Department’s supervision with the Department to provide family maintenance and other services.⁴

DISCUSSION

1. *Governing Law*

Section 300, subdivision (j), authorizes dependency jurisdiction when “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or

⁴ The section 364 judicial review hearing originally scheduled for April 27, 2020—six months after the disposition hearing—has now been continued to February 2, 2021.

neglected, as defined in those subdivisions.” In considering the applicability of subdivision (j), the Legislature directed the juvenile court to “consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.” (§ 300, subd. (j).) “The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the [enumerated] subdivisions. . . . The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.” (*In re I.J.* (2013) 56 Cal.4th 766, 774.)

Although section 300 requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146), the juvenile court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383; *In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court may consider past events in deciding whether a child currently needs the court’s protection. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215-1216; *In re N.M.*, at p. 165.) A parent’s “[p]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.” (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *Kadence P.*, at p. 1384.)

In addition, the Legislature has declared, “The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child.” (§ 300.2.)

2. *Substantial Evidence Supports the Juvenile Court’s Jurisdiction Finding*

Substantial evidence supports the finding under section 300, subdivision (j), that there was a substantial risk R.R. would be abused or neglected within the meaning of section 300, subdivision (b), as had his older siblings, Bella and Angolina.⁵ Alisha does not dispute that R.R.’s siblings were neglected within the meaning of subdivision (b)(1) as a result of Alisha’s substance abuse—a finding that, in any event, was established by the prior adjudication of the two older siblings’ dependency petitions and resulting exercise of jurisdiction over them. (See *In re Joshua J.*

⁵ “In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.”” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) We review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence such that a reasonable trier of fact could find that the order is appropriate. (*Ibid.*; see *In re Quentin H.* (2014) 230 Cal.App.4th 608, 613.)

(1995) 39 Cal.App.4th 984, 992 “[t]he first prong of the section 300, subdivision (j), petition—that [the sibling] had been abused—already had been adjudicated in the earlier dependency proceeding”].)

Section 300, subdivision (b)(1), pursuant to which dependency jurisdiction was asserted over Bella and Angolina and by reference as to R.R., applies when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or . . . by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s . . . substance abuse.” Where the subject of the dependency petition is a child of “tender years,” as is R.R., a finding of a parent’s substance abuse is “prima facie evidence of the inability of a parent . . . to provide regular care resulting in a substantial risk of harm.” (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1219; *In re Drake M.* (2012) 211 Cal.App.4th 754, 767; but see *In re David M.* (2005) 134 Cal.App.4th 822, 825, 830 [requiring social services agency to offer evidence mother’s substance abuse and mental illness caused harm to her two-year-old and two-day-old children, although mother’s substance abuse and mental health issues were accepted as true, because harm “may not be presumed”].)

Here, substantial evidence supported the juvenile court’s finding of Alisha’s substance abuse. Although Alisha may not have used any illicit substances during the last treatment period, the court properly looked to the length and severity of Alisha’s substance abuse history (nearly a decade of methamphetamine use commencing from the age of 16, accompanied by a criminal

history of multiple drug-related arrests and at least one conviction for drug possession); the very fact Alisha had not yet completed her drug treatment (she had not yet completed her outpatient program and had not even commenced the aftercare drug treatment program); and the fact, as Alisha herself admitted, she had previously relapsed, leading to termination of reunification services for R.R.’s siblings just months before his birth.

Alisha challenges the court’s substance abuse finding, pointing to the evidence she has not used any illicit substances for at least 18 months, including negative results of frequent drug testing, and has been complying with the terms of her probation and court-ordered drug treatment services. Alisha’s argument essentially invites us to reweigh the evidence, a task outside the proper scope of appellate review. (See, e.g., *In re I.J.*, *supra*, 56 Cal.4th at p. 773 [“[w]e do not reweigh the evidence”]; *In re S.R.* (2020) 48 Cal.App.5th 204, 219 [same].)

To be sure, the “tender years” presumption of a substantial risk of harm arising from a finding of the parent’s substance abuse is rebuttable. (See *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1219.) Alisha on appeal essentially argues, even assuming there was substantial evidence she continued to suffer from a substance abuse disorder, she rebutted the presumption that not-yet one-year-old R.R. was at risk of serious physical harm. She contends she took good care of R.R. and points to evidence of R.R.’s emotional and physical health⁶ and

⁶ Alisha stated R.R. was generally “calm, playful, good, doesn’t cry a lot, and is a happy baby.” Alisha also told the Department’s social worker that R.R., who was seen by a pediatrician, had age-appropriate development, as he could sit,

her mental health coordinator's positive statements about Alisha's parenting.⁷ She also argues the Department's decision not to seek jurisdiction over R.R. immediately after his birth notwithstanding his sisters' dependency status indicates the child was not at a substantial risk of harm from her substance abuse. In addition, Alisha asserts, as she did in the juvenile court, R.R. was protected from potential harm without dependency jurisdiction because she was required as a condition of her felony probation to submit to monthly drug testing and to participate in an aftercare drug treatment program, with group meetings and additional testing requirements.

The record does contain some evidence supporting Alisha's claim that R.R. could be safe in her care (evidence that ultimately led the juvenile court at disposition not to remove R.R. from his parents' custody). But the burden of rebutting the "tender years" presumption rested on Alisha and, as such, we may reverse the court's finding her substance abuse created a substantial risk of harm for R.R. only if the contrary finding was compelled as a matter of law—that is, only if Alisha's evidence was

crawl and stand while holding onto something, and his immunizations were up to date.

⁷ Alisha's mental health coordinator denied Alisha left R.R. alone or unattended and denied having any concerns about Alisha's parenting of the boy, who the coordinator said was one of the best-cared-for children. During random room checks, R.R. was always found in his crib in compliance with the facility's policy requiring mothers not to sleep in the same beds as their children. Although Alicia was quiet and guarded, she regularly inquired about available resources, became employed as soon as she began the program and was "always use[d] . . . as an example" by one of the program's case managers.

“uncontradicted and unimpeached” and “of such a character and weight as to leave no room for a judicial determination that it was insufficient” to carry her burden. (See *Juen v. Alain Pinel Realtors, Inc.* (2019) 32 Cal.App.5th 972, 978-979; *Atkins v. City of Los Angeles* (2017) 8 Cal.App.5th 696, 734; see also *In re R.V.* (2015) 61 Cal.4th 181, 201 [where party fails to meet its burden on an issue in the trial court, “the inquiry on appeal is whether the weight and character of the evidence . . . was such that the [trial] court could not reasonably reject it”].) Given her history of relapse and the still-ongoing nature of her treatment programs, Alisha’s evidence R.R. had not yet been injured as a result of her substance abuse falls far short of meeting that standard.

Finally, Alisha contends the juvenile court necessarily found there was no substantial evidence to support count j-1 because it had dismissed count b-1, which was based on substantially the same allegations. As discussed, however, section 300, subdivision (j), provides a court greater latitude to exercise jurisdiction. In any event, the juvenile court, which did not provide an explanation for its dismissal of count b-1, may simply have concluded the subdivision (b)(1) count was redundant and, therefore, unnecessary. Absent findings directed to that count, we decline to speculate any further.

Contrary to Alisha’s contention, *In re Janet T.* (2001) 93 Cal.App.4th 377 did not hold that, if a court dismisses a section 300, subdivision (b), count, it must also dismiss a subdivision (j) count containing similar allegations. In *Janet T.* the Department alleged in part, pursuant to section 300, subdivisions (b) and (j), the children’s mother had failed to ensure her two school-age children attended school, creating a risk of serious physical harm not only to them but also to their two

younger siblings. (*Janet T.*, at pp. 380, 382-383.) It also alleged the mother had serious mental and emotional problems. This court reversed the juvenile court's jurisdiction findings under subdivision (b) for insufficient evidence that the mother's failure to ensure regular school attendance exposed any of the children to physical harm or that her emotional issues created a risk of harm to the children. (*Id.* at pp. 389-390.) Because the subdivision (b) allegation failed, it could not provide a basis for jurisdiction for sibling abuse under subdivision (j). (*Id.* at p. 391.) Here, in contrast, the subdivision (b) allegations regarding R.R.'s siblings had already been sustained; and Alisha's parental rights as to her two eldest children had been terminated.

3. *Alisha Has Failed To Establish the Juvenile Court's
Disposition Order Should Be Reversed*

Alisha's only argument for reversal of the disposition order is that dependency jurisdiction was not warranted. Accordingly, in affirming the juvenile court's jurisdiction finding, we also affirm the disposition order.

DISPOSITION

The juvenile court's October 28, 2019 jurisdiction finding and disposition order are affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.